

6.0 COMPLIANCE WITH ENVIRONMENTAL LAWS AND EXECUTIVE ORDERS

Various federal laws and executive orders that address specific environmental concerns must be addressed by the proposed project. This section provides a summary of those requirements that are applicable to the proposed project.

6.1 CLEAN WATER ACT (33 U.S.C. 1251 ET SEQ.)

The Clean Water Act (CWA) is a 1977 amendment to the Federal Water Pollution Control Act of 1972, which set the basic structure for regulating discharges of pollutants to waters of the United States. The law gives EPA the authority to set effluent standards on an industry basis (technology-based) and continues the requirements to set water quality standards for all contaminants in surface waters. The CWA makes it unlawful for any person to discharge any pollutant from a point source into navigable waters unless an NPDES permit is obtained under the Act.

EPA effluent limitation guidelines and new source performance standards for the oil and gas extraction point source category went into effect on December 16, 1996 (61 FR 66123). With promulgation of the new source performance standards for oil and gas extraction, those oil and gas extraction projects requiring NPDES permits, which are defined as “new sources”, are subject to the provisions of NEPA. Section 403(c) of the CWA requires that NPDES permits for ocean discharges be issued in compliance with EPA’s Ocean Discharge Criteria for preventing unreasonable degradation of ocean waters.

Forcenergy (now Forest Oil) submitted a new source NPDES permit application on October 15, 1999, and a revised permit application on February 29, 2000. This EA has been prepared to support EPA’s review of the NPDES permit application.

Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the United States and is regulated by the Army Corps of Engineers.

6.2 CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ)

The Clean Air Act (CAA) of 1970 is the comprehensive Federal law that regulates air emissions from area, stationary, and mobile sources. This law authorizes the EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and the environment. The goal of the Act was to set and achieve NAAQS in every state by 1975. The setting of maximum pollutant standards was coupled with directing the states to develop state implementation plans (SIP's) applicable to appropriate industrial sources in the state. The Act was amended in 1977 primarily to set new goals (dates) for achieving attainment of NAAQS since many areas of the country had failed to meet the deadlines. The 1990 amendments to the Clean Air Act in large part were intended to meet unaddressed or insufficiently addressed problems such as acid rain, ground-level ozone, stratospheric ozone depletion, and air toxics.

EPA has established NAAQS for NO_x, CO, O₃, SO₂, and PM₁₀; the Alaska Department of Environmental Conservation has not established additional or more stringent standards. These air quality standards are applicable to the Redoubt Shoal Unit Development Project. The operation of a new major stationary source in an area which is in attainment for all NAAQS, such as the Cook Inlet area, is governed by the Prevention of Significant Deterioration (PSD) program of the CAA. The proposed project is located in a PSD Class II area. Emissions of regulated pollutants from the Osprey Platform and Kustatan Production

Facility are not predicted to exceed the PSD applicability threshold of 250 tpy. Forest Oil intends to apply for two minor air quality construction permits from ADEC (one for the Osprey Platform and one for the Kustatan Production Facility). Appendix G provides correspondence between EPA and ADEC regarding air permitting issues.

6.3 NATIONAL HISTORIC PRESERVATION ACT (16 U.S.C. 470)

The National Historic Preservation Act (NHPA), as amended, directs federal agencies to integrate historic preservation into all activities which either directly or indirectly involve land use decisions. This is to ensure federal leadership in the preservation of prehistoric and historic resources of the United States (EPA 1991). Before approving or carrying out a federal, federally assisted, or federally licensed undertaking, Section 106 of the NHPA requires federal agencies to take into consideration the impact that the action may have on historic properties which are included on, or are eligible for inclusion on, the National Register of Historic Places. Section 106 also requires that federal agencies provide the Advisory Council on Historic Preservation (ACHP) with the opportunity to comment on the undertaking. The Section 106 review process is usually carried out as part of a formal consultation with the State Historic Preservation Officer (SHPO), the ACHP, and any other parties, such as Indian tribes that have knowledge of, or a particular interest in, historic resources in the project area. Formal consultation is concluded upon preparation of a Memorandum of Agreement among the consulting parties which addresses the treatment of any adverse effects.

The village of Kustatan is eligible for inclusion on the National Register of Historic Places. A Programmatic Agreement has been negotiated among EPA, the Alaska SHPO, Forest Oil, and various Tribes and Alaska Native Corporations regarding implementation of the Redoubt Shoal oil exploration and development program. The Programmatic Agreement is provided as Appendix E.

6.4 ENDANGERED SPECIES ACT (16 U.S.C. 1531 ET SEQ.)

The purpose of the Endangered Species Act (ESA) is to ensure that federal agencies and departments use their authorities to protect and conserve endangered and threatened species. Section 7 of the Act requires that federal agencies prevent or modify any projects authorized, funded, or carried out by the agencies that are “likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of critical habitat of such species.”

Federal agencies must review actions they undertake or support to determine whether they may affect endangered species or their habitats. If such review reveals the potential for effects, the federal agency must consult with the USFWS or NMFS, as appropriate. Consultation is carried out for the purpose of identifying whether a federal action is likely to jeopardize the continued existence of the endangered or threatened species or adversely affect its critical habitat. If USFWS or NMFS determines that a proposed action would likely have this negative impact, then the project must be stopped unless the consulting parties can agree on alternatives or mitigation measures to eliminate jeopardy.

A Biological Assessment (Appendix B) was prepared to determine whether the wastewater discharges from the Osprey Platform will have an effect on a listed or proposed species, and to determine whether informal or formal consultation with NMFS and USFWS is required. Based on the Cook Inlet tidal flux, the anticipated volume of wastewater discharges, and the Osprey Platform’s contribution to the cumulative loading of waste discharges in Cook Inlet, the Biological Assessment concluded that wastewater discharges from the Osprey Platform will be rapidly diluted and will likely have no adverse effect on threatened or endangered marine mammal and bird species, or critical habitat associated with these species.

NMFS and USFWS have concurred with the findings of the BA; the concurrence letters are provided in Appendix D.

6.5 MARINE MAMMAL PROTECTION ACT

The Marine Mammal Protection Act of 1972 (MMPA) was most recently reauthorized in 1994. In passing the MMPA in 1972, Congress found that:

- certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;
- such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population level;
- measures should be taken immediately to replenish any species or population stock which has diminished below its optimum sustainable level;
- there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully; and
- marine mammals have proven themselves to be resources of great international significance, aesthetic and recreational as well as economic.

The MMPA established a moratorium, with certain exceptions, on the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Under the MMPA, the Secretary of Commerce is responsible for the conservation and management of pinnipeds (other than walruses) and cetaceans. The Secretary of the Interior is responsible for walruses, sea and marine otters, polar bears, manatees and dugongs. The Secretary of Commerce delegated MMPA authority to NMFS.

Part of the responsibility that NMFS has under the MMPA involves monitoring populations of marine mammals to make sure that they stay at optimum levels. If a population falls below its optimum level, it is designated as "depleted," and a conservation plan is developed to guide research and management actions to restore the population to healthy levels. The MMPA allows the incidental, but not intentional, taking, by U.S. citizens engaged in activities other than commercial fishing, of small numbers of depleted as well as non-depleted marine mammals if, after notice and opportunity for public comment, the Secretary of Commerce finds that there will be a negligible impact on the affected species or stock, and there will not be an unmitigatable adverse impact on the availability of such species or stock for taking for subsistence uses by Alaska Natives; and prescribes necessary regulations that detail methods of taking, monitoring, and reporting requirements. However, the 1994 amendments provide that this regulation requirement may be waived if the proposed activity results in only harassment, and no serious injury or mortality is anticipated.

The Act's moratorium on taking does not apply to taking by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing, and is not done in a wasteful manner.

Cook Inlet beluga whales are listed as "depleted" under the MMPA.

6.6 MAGNUSON-STEVENSON ACT, 1996 AMENDMENTS (PL-104-267)

The Magnuson-Stevens Act regulates fishing in U.S. waters; the 1996 amendments included substantial new provisions to protect important habitats for all federally managed species of marine and anadromous fish. The amendment created a new requirements to describe and identify “essential fish habitat” (EFH) in each fishery management plan. EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” All federal agencies are required to consult with NMFS on all actions undertaken by the agency that may adversely affect EFH.

An Essential Fish Habitat Assessment (Appendix C) was prepared to evaluate impacts of wastewater discharges from the Osprey Platform on EFH. The EFH Assessment concluded that wastewater discharges from the Osprey Platform will be rapidly diluted and will likely have no no potential direct, indirect, or cumulative impacts on any of the essential fish habitats of Cook Inlet.

NMFS has concurred with the findings of the EFH Assessment; the concurrence letter is provided in Appendix D.

6.7 EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS (42 FR 26961, MAY 24, 1977)

Executive Order 11990, Protection of Wetlands, requires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA’s Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, EPA must prepare a floodplain/wetlands assessment (included in this EA); adverse impacts must be avoided or minimized if no practicable alternative to the action exists.

The access road and onshore pipeline placement will cross 772 lineal feet of wetlands. Adverse impacts can be minimized by rerouting the road and by conducting wetlands mitigation and restoration activities as specified by the U.S. Army Corps of Engineers.

6.8 COASTAL ZONE MANAGEMENT ACT (16 U.S.C. 1451 ET SEQ.)

The Coastal Zone Management Act (CZMA) encourages the management of coastal zone areas and provides grants to be used in maintaining coastal zone areas.

The Coastal Zone Management Act (16 U.S.C. 1451 et seq.) requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official must assess the impact of the action on the coastal zone (included in this EA). If the action significantly affects the coastal zone area and the State has an approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR part 930.

The proposed project is not expected to significantly affect the coastal zone area, unless a major oil spill were to occur.

Federal agencies must consult with the USFWS (and NMFS, as appropriate) in order to develop measures to mitigate project-related losses of fish and wildlife resources.

6.9 EXECUTIVE ORDER 12898, ENVIRONMENTAL JUSTICE

On February 11, 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," and an accompanying Presidential memorandum, to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities. The Executive Order, as amended, directs Federal agencies to develop, by March 24, 1995 an Environmental Justice Strategy that identifies and addresses disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations. Under the authority of NEPA and consistent with regulations and guidelines issued by the President's Council on Environmental Quality, EPA routinely reviews the environmental effects of major Federal actions significantly affecting the quality of the human environment. For such actions, EPA reviewers are required to focus on the spatial distribution of human health, social, and economic effects to ensure that agency decisionmakers are aware of the extent to which those impacts fall disproportionately on covered communities.

No environmental justice communities other than Native American Tribal Governments have been identified as potentially affected by the proposed project.